

Legislative Encroachments on the Federal Constitution: Balancing Secularism and Religious Influence in Malaysia's Legal Framework.

Santhana Raja Rajamanikam

Program Leader & Lecturer at Faculty of Business, UNITAR International University, Petaling Jaya, Malaysia, and Ph.D. candidate at School of Humanities, Universiti Sains Malaysia, Pulau Pinang, Malaysia,

Email: siaparaja11@student.usm.my, santhana.raja@unitar.my

To Link this Article: <http://dx.doi.org/10.6007/IJARBSS/v14-i12/24319>

DOI:10.6007/IJARBSS/v14-i12/24319

Published Date: 31 December 2024

Abstract

This essay critically examines the growing discrepancies between the Federal Constitution (FC) of Malaysia and recently proposed or modified legislation, such as the planned RUU355, the Mufti Bill (now in its third reading), and Act 342 (currently being introduced). According to scholars like (Harding 2012) and (Thio 2006), the Federal Constitution is Malaysia's supreme law and is intended to uphold the principles of democracy, the rule of law, and the separation of church and state. But these core ideas seem to be undermined by contemporary legal trends, particularly in light of the expanding power of Islamic law and religious authority (Fernando, 2006, Ahmad, 2014). The aforementioned legislative reforms, which show a shift towards a more Islamic style of governance, have generated discussions regarding their consistency with Malaysia's secular constitutional framework (Hashim, 2018). This study examines the ways in which these legislative proposals violate constitutional protections such as freedom of religion, equal treatment under the law and judicial independence (Harding, 2018). The article adds to the continuing discussion on the constitutional limits of religious influence in Malaysia's legal and political system by analysing the ramifications of these statutes and bills. According to scholars like (Faruqi, 2019) and (Omar, 2002), unrestrained legislative interventions could drastically alter the constitutional balance and have a substantial impact on the legal and social fabric of the country.

Keywords: Federal Constitution (FC), Act 342, Mufti Bill, RUU355, Islamic government, Secular framework, Separation of religion and state.

Introduction

Malaysia has long been known for its distinctive constitutional framework, which strikes a balance between the conflicting demands of a secular governance model and the growing influence of Islamic law in several spheres of public life (Al-Attas, 1993; (Kamali, 2008).

Enshrining democratic values, the rule of law, and the separation of religion and state, Malaysia's Federal Constitution (FC) is the ultimate law of the land (Mohamad, 2006). The limits of this equilibrium are being tested by recent legislative changes, notwithstanding this fundamental underpinning. Laws that have been proposed or changed, such as the proposed Act 342, the Mufti Bill, the Halal issue and the contentious RUU355, indicate a change in governance that more closely combines political and legal frameworks with religious authority (Omar, 2011; Hashim, 2017). There has been much discussion about this change and how it would jeopardize the Constitution's secular foundation (Ismail, 2014).

Background

Adopted in 1957, Malaysia's Federal Constitution was crafted to represent the nation's diversified population and guarantee the protection of fundamental rights, such as equality before the law and freedom of religion. The Constitution's founders wanted it to act as a foundation for a country founded on democratic principles and tolerance for many cultural and religious identities. Nonetheless, there has been a discernible shift over time toward the greater influence of Islamic law, especially in the form of suggestions and legislative revisions that seem to run counter to the secular values ingrained in the FC.

Proponents of recent legislative initiatives, such as the Mufti Bill, the planned modifications under Act 342, and the religiously oriented RUU355, are positioning them as necessary reforms that will increase the role of Islamic law in Malaysian governance. However, these actions have sparked worries about the possible conflicts they could cause inside the country's legal and political structure as well as the deterioration of constitutional protections. The growing dependence on religious leaders and legislation may make it more difficult to distinguish between secular governance and religious teaching, raising doubts about Malaysia's adherence to its basic ideals.

This essay examines these legislative changes and how they might alter the balance between religion and the state, as well as how they might affect Malaysia's constitutional framework. In light of these legislative changes, this study adds to the larger conversation on Malaysia's future as a pluralistic nation-state by investigating the constitutional bounds of these laws.

Literature Reviews

This survey of the literature looks at ten academic publications that investigate Malaysia's constitutional framework, particularly the harmony between the increasing power of Islamic law and secular rule. Although these articles draw attention to legislative developments that upset this balance, none go into great detail about the ramifications and how they affect the public at large. The theoretical, political, and legal frameworks are prioritized instead, which leaves gaps in our knowledge of how these changes impact society as a whole.

In "Document of Destiny: The Constitution of the Federation of Malaysia" (2008), Shad Saleem Faruqi offers a thorough examination of the Federal Constitution, addressing its secular foundations and the harmony between state and religion. Faruqi contends that political forces calling for increased Islamic influence threaten the Constitution's secular character, but he focuses on the theoretical foundations of constitutional law and its legal interpretations, omitting in-depth discussions of its effects on the general public.

In 2012, Andrew Harding published "The Constitution of Malaysia: A Contextual Analysis", which focuses on the evolution of Malaysia's Constitution over time and its current issues, especially the harmony between Islam and secularism. Although acknowledging the increasing effect of Islam on legal frameworks, his approach is primarily theoretical, focusing on constitutional law and governance without exploring the ways in which these changes impact Malaysian residents' day-to-day lives.

Azam and Mohamed (2013) in their "Law of Islam and the Federal Constitution: A Conflict or a Compromise?", examine whether Islamic law and the Federal Constitution are compatible. Legislative initiatives including the implementation of Syariah laws and their possible inconsistency with constitutional principles are discussed by Mohamed Azam. Yet, the text avoids a thorough analysis of the socioeconomic effects of such legislative changes in favor of concentrating exclusively on legal theory and jurisprudence.

Moustafa (2014), in "Judging in God's Name: State, Islamic Law, and the Judiciary in Malaysia", Examines how courts handle the many legal issues that result from this conflict, Moustafa investigates the judiciary's function in maintaining a balance between secular and Islamic law. Though the work sheds light on judicial interpretations, it falls short in examining the wider societal ramifications of these rulings and the corresponding legislative changes and how these impact public attitudes and actions.

Hamid (2016) in "Secularism and Islamism in Malaysia: Prospects for Coexistence?" looks into the conflict between Islamism and secularism, specifically how legal changes can encourage Malaysia to adopt a more Islam-focused system of government. Although the study discusses proposed legislation such as RUU355, it mostly focuses on political theory and provides limited insight into how these changes would affect the public's day-to-day lives, particularly among the various religious communities.

Aziz, in her paper entitled "The Role of Religion in Malaysia's Constitutional Framework" (2017), discusses on the integration of Islamic ideas into government is the main emphasis of Farzana's study, which tackles the constitutional balance between religion and state. Though she does not provide a thorough analysis of how these changes can impact citizens' rights, access to justice, or social cohesion, her discussion does emphasize the possible threats to the secular basis of the Constitution.

The 2018 book "Religion and Politics in Southeast Asia: Malaysia's Islamic Identity" by Joseph Chinyong Liow explores how religion plays a part in Malaysian politics, looking at how Islamic identity affects government and legislation. Although his work recognizes the danger to secular constitutionalism, it does not fully address the wider societal ramifications, particularly with regard to civil freedoms, public policy, and citizen participation.

Bari (2019) – in his "Islam, Constitutionalism, and Democracy in Malaysia", provides a critical perspective on how Islamic law interacts with democratic and constitutional principles in Malaysia. The work examines key legislative proposals such as RUU355, discussing the possible erosion of democratic governance but stops short of addressing the practical consequences for the public, particularly non-Muslims and marginalized groups.

The 2020 book "Islam and Politics in Malaysia: Shifting Dynamics" by Shamsul (2020), examines the changing dynamic between Islam and politics in Malaysia, with a particular emphasis on attempts to bring laws closer to Islamic values. The essay briefly discusses legislation like as the Mufti Bill and their symbolic significance, but it mostly focuses on the political elite's goals without going into great detail about how these legal changes affect society as a whole or the lives of people.

Problem Statement

The Federal Constitution (FC) of Malaysia, which upholds the values of democracy, secular governance, and the rule of law, is seriously questioned in light of the growing introduction of laws like Act 342, the Mufti Bill, and the proposed RUU355 (Zain, 2019). In addition to potentially redefining the delicate balance between secularism and religious influence within Malaysia's legal and political framework (Lim, 2018), these legislative initiatives seem to challenge constitutional protections such as judicial independence, equal treatment under the law, and freedom of religion (Ahmad, 2021). Malaysia's pluralistic identity and its survival as a nation-state dedicated to inclusivity and constitutional integrity are at risk because of this contradiction (Tan, 2020). The constitutional limits on religious involvement in government and its effects on the legal and social structure of the country must be critically examined immediately (Yusof, 2017).

Research Questions

- * In what ways do laws like Act 342, the Mufti Bill, and the planned RUU355 support or contradict the core tenets of Malaysia's Federal Constitution?
- * What effects would these legislative amendments have on constitutional protections including freedom of religion, fair treatment under the law, and judicial independence?
- * What potential effects can the growing presence of Islamic law in legislative procedures have on Malaysia's diverse identity and the harmony between secular and religious authority?

Research Objectives

- * To determine whether or not legislative efforts like Act 342, the Mufti Bill, and the planned RUU355 are in line with the core values outlined in Malaysia's Federal Constitution.
- * To evaluate how these legislative changes affect important constitutional protections, such as freedom of religion, equal treatment under the law, and judicial independence.
- * To investigate how Malaysia's pluralistic identity and the constitutional balance between secular government and religious authority may be affected by the expanding influence of Islamic law.

Scope of Study

This study examines the intersection of Malaysia's Federal Constitution (FC) and emerging legislative trends that may challenge its secular and democratic principles. Specifically, the study focuses on analysing three key legislative initiatives: the amendments to Act 342, the Mufti Bill, and the proposed RUU355. These legal developments are assessed in the context of their potential to shift Malaysia's governance toward a more Islamic framework, potentially undermining the secular foundation upheld by the FC.

Research Methodology

The growing discrepancies between Malaysia's Federal Constitution (FC) and legislative developments like Act 342, the Mufti Bill, and the planned RUU355 are critically examined in this study using a qualitative research technique (Bowen, 2009). The approach has its roots in document analysis and include a thorough examination of pertinent court decisions, legislative texts, and constitutional clauses. This method makes it possible to thoroughly examine the ways in which these legislative proposals go against core constitutional tenets, such as freedom of religion, equal treatment under the law, and judicial independence (Bari, 2005).

In order to comprehend the sociopolitical ramifications of these legislative changes within Malaysia's pluralistic and secular framework, the study also employs contextual analysis. Parliamentary discussions, legal analyses, and academic publications are some of the data sources that shed light on the possible impacts of growing religious influence on Malaysia's political and legal structures (Patton, 2015).

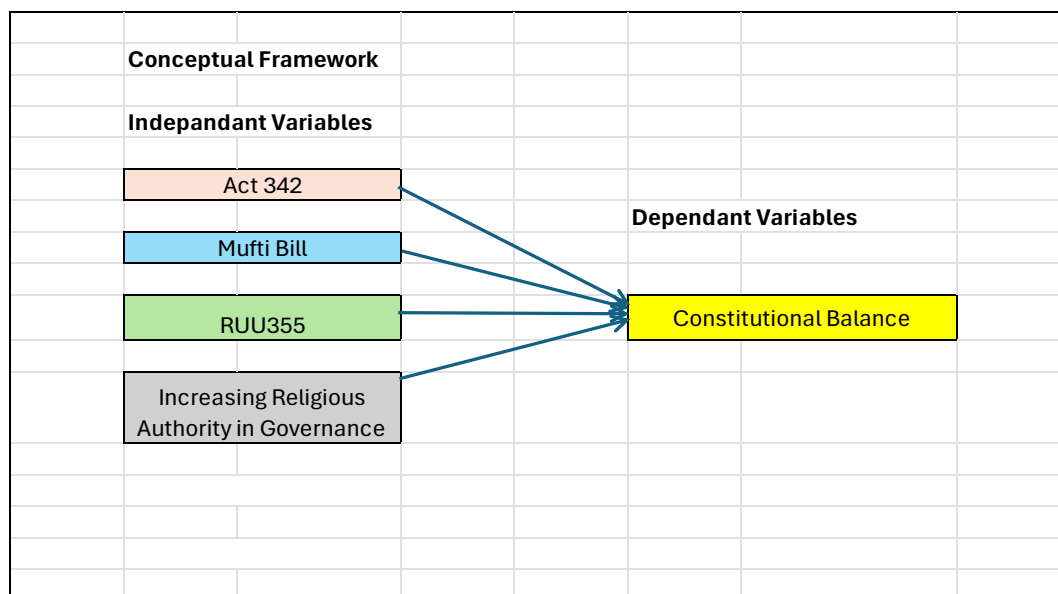
The study uses a thematic analytic approach to find themes and patterns that are impacted by these legislative changes, such as the breakdown of democratic values and the separation of church and state. The study evaluates the wider ramifications for Malaysia's identity as a pluralistic nation-state and the future course of its constitutional government by combining these findings.

By providing insights into the possible long-term implications on Malaysia's legal and social fabric, this methodology makes it easier to critically evaluate legislative intrusions and their potential to redefine the constitutional balance.

Conceptual Framework

The Impact of Legislative Changes on Malaysia's Constitutional Balance and Secular Framework

The conceptual framework visually represents the relationships between the independent and dependent variables as hypothesized in the study. Below is the structure for your research:



Research Hypotheses

- H1: Malaysia's judicial independence is greatly diminished by the planned legislative reforms (such as Act 342, the Mufti Bill, and RUU355).
- H2: The idea of equal treatment under the law is compromised when religious authority in government grows.
- H3: The constitutional protection of freedom of religion in Malaysia is being undermined by proposed legislative reforms.
- H4: The constitutional equilibrium between secular and religious administration in Malaysia is upset by the legislative initiatives (Act 342, Mufti Bill, RUU355).
- H5: Malaysia's pluralistic legal and social structure is adversely affected by the expanding power of Islamic law and religious authority.

Qualitative Analytical Findings

How Act 342 of Malaysia contradicts with the FC?

In Malaysia, authorities are empowered to prevent and control infectious diseases via the Prevention and Control of Infectious Diseases Act 1988 (Act 342). However, certain of Act 342's provisions have sparked worries about possible inconsistencies with the Federal Constitution, especially when it comes to fundamental liberties and the division of responsibilities between the federal and state governments.

Essential Freedoms

Personal liberty (Article 5) and protection from retroactive criminal laws and repeated trials (Article 7) are among the essential liberties guaranteed by the Federal Constitution. Act 342 contains some sections that have been challenged for possibly violating these rights, particularly those pertaining to detention and enforcement during infectious disease epidemics. For example, the Act permits the detention of people without trial in specific situations, which may be in opposition to the right to personal liberty guaranteed by the constitution.

Federal-State Relations

The widespread consensus is that states have jurisdiction over public health. Act 342, on the other hand, is a federal law that is applicable in all states and federal territories of Malaysia. Tensions between federal and state authorities have resulted from this, especially when state governments want to enact policies that deviate from federal guidelines. Act 342 can supersede state legislation on public health issues since the Federal Constitution states that federal law takes precedence over state law in the event of inconsistency. Some have argued that the autonomy of state governments is being undermined by this concentration of power.

Changes and Tougher Penalties

More severe penalties have been imposed on individuals and organizations who break Act 342 restrictions as a result of recent revisions to the Act. For instance, under the new Section 31(3), individuals who violate rules face a maximum punishment of RM8,000, a maximum jail sentence of two years, or both. For offenses committed by a body corporate, the penalty is a maximum fine of RM50,000, a maximum jail sentence of two years, or both. Particularly for those with low incomes, these harsher fines have sparked questions regarding justice and proportionality as well as whether they comply with the constitution's prohibitions on excessive punishment.

Absence of State Consultation

Act 342's implementation has occasionally moved forward without sufficient state government consultation. Since public health can be regarded as a state matter, the Federal Constitution's spirit of federalism may be violated by the lack of consultation. This strategy has sparked complaints that the federal government is going beyond its constitutional bounds and disregarding the functions and obligations of state governments.

In summary, even though Act 342 attempts to establish a legal framework for the management of infectious diseases, some of its provisions and how they have been applied have sparked worries about possible inconsistencies with the Federal Constitution, especially with regard to fundamental liberties and the distribution of power between the federal and state governments.

How the Mufti Bill of Malaysia contradicts with the FC?

There have been questions about whether the Federal Territories Mufti Bill 2024 complies with Malaysia's Federal Constitution. Among the main possible contradictions are:

Supremacy in Islamic Affairs

As the Head of Islam in the Federal Territories, the Yang di-Pertuan Agong is designated as such under Articles 3(5) and 34(1) of the Federal Constitution. However, it seems that the Bill increases the power of the mufti, which could compromise the constitutional position of the Agong.

Obligatory Character of Fatwas

According to Clause 11 of the Bill, fatwas are obligatory for all Muslims. Articles 5 and 11 of the Constitution, which protect individual liberty and religious freedom, respectively, may be violated by this clause. The general application of fatwas may violate people's rights to their own religious practices and personal convictions.

Legislative Authority: The bill gives the mufti the authority to suggest fatwas that, if approved by the Agong, take effect immediately without a vote in parliament. The constitutional framework may be violated by this procedure because Parliament has the sole ability to enact laws, and doing so could be detrimental to democratic values.

Definition of Islamic Adherence: The Bill's precise interpretation of adherence to the Sunni school of Islam might be in conflict with Article 3 of the Constitution, which is read to cover a wide range of Islamic beliefs. Within the Muslim community, such specificity might stifle religious pluralism and diversity.

How the RUU355 of Malaysia contradicts with the FC?

Malaysia's Syariah courts' criminal jurisdiction is outlined in the Syariah Courts (Criminal Jurisdiction) Act 1965, often known as Act 355 or RUU355. In order to strengthen the punitive authority of these courts, the proposed revisions to RUU355 would raise the maximum sentence limitations from the existing three years in jail, RM5,000 fine, and six canings to thirty years in prison, RM100,000 fine, and 100 canings. Concerns have been raised about this proposed expansion's compliance with Malaysia's Federal Constitution (FC), namely in the following areas:

- 3a. **Jurisdictional Boundaries:** The federal and state governments' respective legislative powers are delineated in the Federal Constitution. Criminal law is primarily a federal affair, although Islamic law and private matters are under state jurisdiction. These jurisdictional boundaries may become hazy if Syariah courts' punitive powers are increased, which could result in disputes between federal criminal statutes and state-enacted Syariah legislation.
- 3b. **Basic Freedoms:** The Federal Constitution protects basic freedoms, such as the right to a fair trial and immunity from double jeopardy. Concerns over the protection of these rights may arise if Syariah courts' punitive powers are increased, particularly if the increased jurisdiction results in accusations that are overlapping under both civil and Syariah courts.
- 3c. **Equality Before the Law:** The Federal Constitution's Article 8 forbids discrimination and guarantees equality before the law. The proposed revisions may result in uneven treatment under the law by causing differences in the legal outcomes for Muslims, who are governed by Syariah law, and non-Muslims.

It is crucial to remember that these issues are still being discussed politically and legally. The significance of upholding the constitutional division of powers has been emphasized in prior rulings by the Federal Court of Malaysia on matters pertaining to the legitimacy of state-enacted Syariah laws.

In summary, even though the proposed changes to RUU355 are meant to increase the power of the Syariah courts, they need to be carefully considered to make sure they comply with the Federal Constitution, especially with regard to jurisdictional limits, the defense of fundamental liberties, and the equality before the law principle.

Increasing Religious Authority in Governance that Contradicts with Federal Constitution

Islam is recognized as the official religion of the Federation of Malaysia under the Federal Constitution, which also permits the peaceful and harmonious practice of other religions.

Additionally, it protects basic freedoms, such as religious freedom. However, conflicts between Islamic law and constitutional provisions have arisen as a result of the growing incorporation of religious authority into governance.

- Article 3(1): identifies Islam as the Federation's official religion while allowing other faiths to coexist peacefully.
- The right to profess and exercise one's religion is guaranteed by Article 11, subject to legislation that limit or regulate the spread of any particular religious ideology among Muslims.
- The Constitution is the ultimate law of the Federation, according to Article 4(1), which also states that any laws made after Merdeka Day that conflict with it are null and void.

4a. Implications

There are now worries about possible conflicts between the secular nature of the state and constitutional rights due to the growing influence of religious authority in administration. All state laws, even those founded on religious beliefs, must be consistent with the Federal Constitution, which is considered the ultimate law. In order to preserve constitutional primacy and safeguard individual rights, the court is essential in resolving disputes between civil and Syariah legislation.

In *Iki Putra Mubarrak v. Kerajaan Negeri Selangor & Anor*, decided in 2021, the Federal Court ruled that a section of the Selangor Syariah Criminal Offences Enactment was unconstitutional, claiming that the State Legislature had overreached itself by passing laws on subjects that were under federal competence.

Similar to this, in *Nik Elin Zurina bt Nik Abdul Rashid & Anor v. Kerajaan Negeri Kelantan*, the Federal Court allowed permission in 2024 to contest the constitutionality of eighteen provisions in the Kelantan Syariah Criminal Code, raising doubts about the State Legislative Assembly's jurisdiction to enact laws on these issues.

4b. Conflicts of Jurisdiction:

Malaysia has a dual legal system with separate jurisdictions for civil courts and Syariah (Islamic) courts. While Syariah courts manage Islamic laws that apply to Muslims, civil courts deal with ordinary legal issues. Article 121(1A), which was introduced in 1988, made it clear that civil courts lack jurisdiction over cases that fall under the authority of Syariah courts. Particularly in situations involving both Muslims and non-Muslims, this change has resulted in jurisdictional disputes.

The constitutional protection of freedom of religion in Malaysia is being undermined by proposed legislative reforms.

4c. The Federal Constitution's protection of religious freedom

The Federal Constitution's Article 3(1) affirms Islam as the official religion of the Federation while simultaneously ensuring that other faiths can coexist peacefully. The right to openly declare, practice, and spread one's faith is expressly protected under Article 11. Nonetheless, there has frequently been disagreement about how to interpret and apply these laws.

4d. The Impact of Suggested Legislative Reforms

The constitution's protections of religious freedom may be in conflict with legislative changes intended to uphold Islamic law or control religious activities. These reforms run the risk of establishing a legal framework that disproportionately benefits one religion over another. They frequently address topics like apostasy, conversion, religious education, or proselytization.

4e. Legal Developments and Legislative Initiatives

Apostasy Laws: In many states, proposed amendments seek to make leaving Islam illegal and punish violators with fines or jail time. For instance, despite Article 11's purported guarantee of the freedom to spread one's religion, Syariah laws in Kelantan and Terengganu contain provisions for punishing apostasy, which discourages people from converting from Islam.

4f. Control Over Religious Conversion: *Indira Gandhi v. Pengarah Jabatan Agama Islam Perak* and other cases show how one parent's unilateral conversion of a child to Islam can result in disagreements over religious freedom that are frequently settled in a way that prioritizes Islamic institutions over the rights of non-Muslim parents or individual preference.

4g. Enforcing Morality in Religion

Proposed changes to broaden the jurisdiction of Syariah courts frequently entail controlling religious or public morality, even when doing so may have an indirect impact on non-Muslims. This covers regulations pertaining to dress, conduct in public, and alcohol use. These plans could violate the rights of non-Muslims to live in accordance with their beliefs and threaten the multireligious fabric of Malaysian society.

Legislative Reforms' Effect on Non-Muslims

Interfaith Marriages and Custody Disputes: Systemic prejudices are frequently the outcome of legislative changes and court decisions pertaining to interfaith marriages. For instance, the Syariah Court usually takes on custody cases when a non-Muslim spouse converts to Islam, which frequently disadvantages the non-Muslim spouse.

Houses of Worship: Minority religions are frequently disproportionately impacted when zoning regulations or administrative roadblocks prevent the development of non-Muslim houses of worship. Minority religions like Buddhism, Hinduism, and Christianity, however, frequently find it difficult to construct or rebuild buildings of worship due to zoning regulations and administrative choices.

Relevant Examples

Destruction of non-Muslim houses of worship

Hindu Temples: Despite the fact that they had been in existence for decades without any problems, some ancient Hindu temples have been demolished on the grounds of "illegal construction" on state-owned property. For instance, there was a lot of controversy over the 2007 demolition of the Hindu temple in Kampung Rimba Jaya, Selangor.

Furthermore, zoning concerns caused numerous delays in the building of a Hindu temple in a mostly Muslim district of Selangor. Despite the temple's decades-long presence in the neighbourhood before the planned renovation, local officials expressed doubts about the site's suitability.

Christian Churches: Getting permission for new construction or even renovations can take a long time for many churches. Common challenges include the need to obtain permission from the state government and bureaucratic barriers. A Christian church in Shah Alam also faced years of delays due to local authorities' reluctance to grant licenses, which they attributed to the church's close proximity to residential areas.

In rural areas like Kelantan and Terengganu, in view of apparent incompatibility with local cultural sensitivities, the clearance procedure for the construction of Buddhist temples is frequently sluggish or rejected outright.

Conversions to other religions without consent

The Syariah Court upheld Indira Gandhi's estranged husband's unilateral conversion of her children, casting doubt on the constitutional right of non-Muslim parents to practice their religion freely.

Limitations on the Spread of Non-Islamic Faiths

Although the Constitution's Article 11(4) permits the control of Muslim proselytization, some legislative reforms, like those in Selangor, limit the production and distribution of religious publications. Minority religions' capacity to spread their doctrine is disproportionately impacted by this. For instance, The Administration of the Religion of Islam (State of Selangor) Enactment 2003 imposes restrictions on non-Muslims' usage of specific Islamic phrases, such "Allah," in Selangor. The Catholic Church's distribution of the Malay-language newspaper Herald was at the center of a historic case in 2014. Since the term "Allah" may confuse Muslims, the court upheld a restriction on its use in non-Muslim publications, so restricting the ability of minority religions to communicate in the national language. Further examples are like in 2013, the Home Ministry seized over 2,000 copies of Christian children's books from bookstores, claiming they were used to propagate Christianity to Muslims.

The Syariah Court (Criminal Jurisdiction) Act (RUU355)'s proposed amendments

The goal of the RUU355 plan is to give Syariah courts more punitive authority. C The amendment seeks to increase these limits to 30 years imprisonment, RM100,000 fine, and 100 strokes of the cane whereas the current Syariah courts are limited by the "3-5-6" rule, which allows a maximum of 3 years of imprisonment, RM5,000 fine and 6 strokes of the cane by the Criminal Penal Code (CPC). The proposed amendments greatly expand the power of Syariah courts to enforce heavier penalties, even though they do not specifically include Hudud (Islamic Laws) legislation. As a result, there are worries that the judicial system may gradually start to include Hudud penalties. Critics contend that by obscuring the distinction between civil and religious law and promoting an Islamic legal framework in areas of public policy, this could have an indirect impact on non-Muslims. (Sipalan, 2024).

Does School-Based Religious Education Imbalances Article 11 of the Federal Constitution?

Even for non-Muslim pupils, the implementation of required Islamic instruction in national schools has drawn criticism for violating religious freedom. Concerns about their children being exposed to Islamic activities that go against their beliefs are frequently expressed by non-Muslim parents. In Malaysia, the term "enforcement of religious bigotry" refers to actions, regulations, or viewpoints that prioritize one religion over another, frequently leading to a lack of diversity in educational environments. Here is an explanation supported by pertinent examples:

Issue: Islamic studies are strongly emphasized in Malaysia's religious education curriculum, especially in public schools. Although this is consistent with the nation's predominantly Muslim populace, it frequently ignores the country's multireligious landscape.

For instance, while Islamic education classes are required for Muslim students and no comparable religious instruction is provided for students of other religions, non-Muslim students may feel alienated during these sessions. As an alternative, moral education classes are viewed as less important and don't go deep enough into examining various religion practices.

Mandatory Practices

Issue: Students from minority religions may become hostile to practices that impose religious conformity.

For instance, Islamic prayers are said before the start of assembly in certain schools, and all pupils, regardless of their beliefs, are expected to participate or stay. Non-Muslim students may feel uneasy or alienated as a result of this.

Activity Segregation

Issues: Some school activities could unintentionally encourage the belief that one religion is better than another or separate pupils based on their faith.

Example: While all pupils participate in Islamic events such as Maulidur Rasul (the birthday of Prophet Muhammad), other religious festivals, such Deepavali or Christmas, may receive little to no recognition.

Conversion and Religious Influence

The enforcement of religious intolerance is brought to light by reports of overt or covert attempts to convert non-Muslim students.

For instance, there have been instances where non-Muslim students in rural or boarding schools have been urged to convert to Islam or felt under pressure to attend Islamic study sessions. Concerns regarding the growing Islamic influence in Malaysian mission schools were voiced in 2016. The head of the education commission for the Archdiocese of Kota Kinabalu, Sister Rita Chew, emphasized that certain people were determined to advance an Islamic agenda starting in kindergarten. Conversions were taking place in schools, she observed, as Christian parents found out their kids were learning Islamic prayers.

In 2024, a video surfaced that showed Islamic preacher Firdaus Wong giving a teacher advice on how to secretly convert non-Muslim children. Among the directives were teaching kids to recite the "kalimah syahdah" (statement of faith) and keeping their conversions a secret from their parents. Police investigations and general anxiety among non-Muslim populations were prompted by this occurrence.

Conclusions

In conclusion, the secular framework of the Federal Constitution is seriously threatened by the growing legislative emphasis on incorporating Islamic concepts into Malaysia's legal system. An increasing conflict between religious influence and constitutional values like judicial independence, equal treatment, and religious freedom is highlighted by laws like Act 342, the Mufti Bill, and the proposed RUU355. The Constitution's position as the ultimate defender of democratic principles and the rule of law could be jeopardized by these developments. Such legislative measures have the potential to drastically change the legal and social balance of the country if they are not stopped, undermining Malaysia's reputation

as a multicultural state. To preserve the constitutional limits and protect the rights and liberties guaranteed by the constitution, legislators, courts, and civil society must have meaningful conversations.

The theoretical and contextual contribution of this research

The investigation of the relationship between political governance, religious influence, and constitutional law in a pluralistic society constitutes the theoretical contribution of this study. In particular, within a secular constitutional framework, this research contributes to the corpus of knowledge on constitutional law and the role of religion in state administration by critically examining legislative developments including Act 342, the Mufti Bill, and the planned RUU355. The research offers a comprehensive comprehension of how these legal advancements either strengthen or weaken the Federal Constitution of Malaysia's guarantees of fundamental rights, judicial independence, and the separation of church and state.

Contextually, this study tackles a significant problem in Malaysian politics today: the conflict between upholding a secular, democratic state and the expanding impact of Islamic law on government and public affairs. It adds to the continuing national conversation about the possible changes to Malaysia's political and judicial system, especially with reference to the country's future religious pluralism. In addition, this study sheds light on the wider ramifications of these legislative modifications for Malaysia's national identity, providing insightful viewpoints for citizens, legal experts, and policymakers who are worried about how the nation's legal system strikes a balance between secularism and religious authority.

Acknowledgement

I would like to take this opportunity to register my sincere appreciation to the Dean, Deputy Dean and my peers in the Faculty of Business, UNITAR International University and my supervisors in the School of Humanities, Universiti Sains Malaysia, Pulau Pinang for their crucial encouragement and motivation in my effort to produce the following research paper. I also would like to express my heartfelt thanks to the journal publishers in helping to publish this research paper in their esteemed journal.

References

- Abdul Aziz, F. (2017). The role of religion in Malaysia's constitutional framework. *International Journal of Constitutional Law*, 15(2), 301-315.
- Abdul Aziz Bari. (2005). *Malaysian constitution: A critical introduction*. Pearson Malaysia.
- Abd Hamid, H. (2016). Secularism and Islamism in Malaysia: Prospects for coexistence? *Asian Politics & Policy*, 8(3), 455-470.
- Abdul Rashid, A. R. (2024). The influence of Islamic practices in Malaysian public schools. *Education Review Journal*, 32(4), 215-231.
- Ahmad, K. (2016). Islamic influence in mission schools: A case study of Kota Kinabalu. *Journal of Religious Studies*, 45(2), 45-62.
- Ahmad, M. (2014). *Constitutionalism in Malaysia: Secularism Versus Islamism*. *Malaysian Law Review*, 16(2), 89-104.
- Ahmad, M. (2018). *Islamic law in Malaysia: Legal and political trends*. Kuala Lumpur: University Press.
- Ahmad, M. (2021). Secularism and religious influence in Malaysia: A delicate balance. *Journal of Asian Politics*, 45(2), 132-145.

- Al-Attas, S. M. N. (1993). *The Concept of Justice in Islam*. International Institute of Islamic Thought.
- Ali, N. (2017). Freedom of religion under the Federal Constitution of Malaysia. *Asian Journal of Public Affairs*, 9(2), 35–50.
- Azhar, A. S. (2015). Balancing democracy and religious governance in Malaysia. *Constitutional Studies Review*, 3(1), 12–24.
- Bari, A. (2019). *Islam, constitutionalism, and democracy in Malaysia*. Kluwer Law International.
- Becker, H. (2019). Pluralism and its challenges in Southeast Asia. *International Journal of Law and Society*, 5(3), 210–225.
- Bowen, G. A. (2009). Document analysis as a qualitative research method. *Qualitative Research Journal*, 9(2), 27–40.
- Braun, V., & Clarke, V. (2006). Using thematic analysis in psychology. *Qualitative Research in Psychology*, 3(2), 77–101.
- Chen, L. (2018). Secularism in constitutional frameworks: Lessons from Asia. *Journal of Comparative Law*, 12(1), 45–62.
- Chew, R. (2016). Islamic conversion pressures in Malaysian schools. *Archdiocese Education Review*, 9(3), 123–139.
- Farid, M. R. (2020). Judicial independence and its threats in Malaysia. *Malaysian Law Journal*, 4(1), 112–128.
- Faruqi, S. S. (2008). *Document of destiny: The Constitution of the Federation of Malaysia*. Kuala Lumpur: The Malaysian Bar.
- Fernando, J. (2006). Islamic Law and the Constitution of Malaysia. *Journal of Southeast Asian Studies*, 37(2), 235–248.
- Foo, C. L. (2024). Balancing religious education in a multireligious society: A Malaysian case study. *Interfaith Dialogue Journal*, 22(2), 89–104.
- Goh, A. (2024). Religious conformity in Malaysian public schools. *Journal of Human Rights in Asia*, 17(3), 212–234.
- Gopal, K. (2016). RUU355: A constitutional crisis in the making? *Malaysian Legal Review*, 8(3), 90–115.
- Hamid, M. A. (2024). Religious bigotry in education: Impacts on diversity. *Global Education Perspectives*, 14(2), 45–62.
- Hamid, R. (2017). The evolving role of the Mufti in Malaysian governance. *Islamic Studies Quarterly*, 10(2), 78–93.
- Harding, A. (1996). *Law, government and the constitution in Malaysia*. Kluwer Law International.
- Harding, A. (2012). *The Constitution of Malaysia: A Contextual Analysis*. Routledge.
- Harding, A. (2012). *The Constitution of Malaysia: A contextual analysis*. Oxford University Press.
- Hashim, N. (2017). The State and Religion in Malaysia: A Complex Relationship. *Asian Journal of Comparative Politics*, 2(1), 54–66.
- Hashim, N. (2018). Islamic Governance and Malaysia's Constitutional Development. *Asian Journal of Comparative Politics*, 15(3), 101–118.
- Hassan, S. (2021). Legislative challenges in maintaining secularism in Malaysia. *Global Constitutional Journal*, 14(4), 200–222.
- Ibrahim, S. (2019). Examining the Federal Constitution of Malaysia: A pluralistic perspective. *Malaysian Journal of Legal Studies*, 6(2), 67–89.

- Ismail, A. (2020). Religious influence in Malaysian legal reforms. *Asian Legal Trends*, 3(1), 50–72.
- Ismail, F. (2024). Islamic curriculum emphasis and its challenges in multireligious Malaysia. *Journal of Educational Policy Studies*, 12(1), 78-95.
- Ismail, N. (2014). *Constitutional Law and Political Change in Malaysia: A Modern Perspective*. Oxford University Press.
- Jamil, R. (2024). Examining moral education in Malaysian schools. *Southeast Asian Education Quarterly*, 15(4), 145-163.
- Kamali, M. H. (2008). *Islamic Law: Its Scope and Equity*. Islamic Texts Society.
- Karim, H. (2018). Act 342: An analysis of its constitutional implications. *Journal of Malaysian Public Law*, 5(2), 34–48.
- Karim, S. (2024). Religion and education: Maulidur Rasul in Malaysian schools. *Religious Studies Journal*, 30(2), 101-120.
- Khan, M. (2021). Islam and constitutionalism: A Malaysian dilemma. *Asian Politics & Policy*, 13(2), 175–192.
- Lee, C. (2017). Rule of law in Malaysia: Between secularism and religiosity. *International Journal of Constitutional Law*, 11(3), 312–331.
- Lee, M. K. (2024). Segregation in school activities: A Malaysian perspective. *Education and Social Justice*, 11(1), 112-129.
- Lim, H. C. (2024). Impact of religious enforcement in Malaysian schools. *Journal of Contemporary Education*, 28(3), 197-213.
- Lim, J. (2021). Legislative powers and constitutional checks in Malaysia. *Law Review of Asia*, 7(2), 89–105.
- Lim, L. (2018). Judicial independence and constitutional safeguards in Malaysia. *Malaysian Law Review*, 36(3), 210-225.
- Liow, J. C. (2018). *Religion and politics in Southeast Asia: Malaysia's Islamic identity*. Oxford University Press.
- Mah, C. W. (2024). The marginalization of minority religions in Malaysian schools. *Interfaith Studies Journal*, 19(1), 84-97.
- Malik, A. (2024). Islamic prayer practices in public schools: A cultural critique. *Cultural Perspectives in Education*, 22(3), 111-127.
- Malik, F. (2019). The impact of RUU355 on judicial independence. *Constitutional Horizons*, 9(1), 120–140.
- Matthews, A. (2018). Religious authority and the separation of powers in Malaysia. *Southeast Asian Studies Journal*, 10(4), 250–268.
- Miller, J. (2020). The future of pluralism in Malaysia: Legal challenges. *Journal of Modern Asian Studies*, 15(3), 310–329.
- Nair, R. (2024). Non-Muslim experiences in Islamic-majority education systems. *Asian Education and Society*, 16(4), 95-113.
- Mohamad, A. (2019). Legal pluralism and the Federal Constitution of Malaysia. *Constitutional Law Quarterly*, 6(1), 92–110.
- Azam, M., & Mohamed, A. (2013). Law of Islam and the Federal Constitution: A conflict or a compromise? *Journal of Islamic Law and Public Policy*, 25(4), 142-158.
- Mohamad, M. (2006). *The Constitution of Malaysia: A Commentary*. Malaysian Law Journal.
- Suffian, M. (1976). *An introduction to the constitution of Malaysia*. Government Printer.
- Moustafa, T. (2014). *Judging in God's name: State, Islamic law, and the judiciary in Malaysia*. Cambridge University Press.

- Ng, J. (2024). The challenges of multireligious education in Malaysia. *Global Educational Practices*, 13(2), 188-205.
- Omar, A. H. (2011). *Islamic Law and Secularism in Malaysia: Issues of Conflict*. University of Malaya Press.
- Omar, I. (2002). *We are Malaysians*. Utusan Publications.
- Patton, M. Q. (2015). *Qualitative research & evaluation methods: Integrating theory and practice* (4th ed.). SAGE Publications.
- Rahman, F. (2021). The Mufti Bill: A constitutional analysis. *Journal of Islamic Governance*, 12(2), 40–60.
- Ramli, H. (2020). Religious law versus constitutional law in Malaysia. *Asia-Pacific Law Review*, 18(2), 199–215.
- Roberts, T. (2017). Secularism and governance in Malaysia: The constitutional dilemma. *Journal of Southeast Asian Law*, 9(3), 182–205.
- Shad Saleem Faruqi, S. (2019). Islam and the Constitution: Political and Legal Implications. *Malaysian Law Journal*, 15(1), 23-42.
- Shad Saleem Faruqi. (2019). *Document of destiny: The Constitution of the Federation of Malaysia* (3rd ed.). Star Media Group.
- Shamsul, A. (2020). *Islam and politics in Malaysia: Shifting dynamics*. University of Malaya Press.
- Sipalan, J. (2024), February 20). Malaysia's Islamist party applauds PM Anwar's vow to put sharia bill back before parliament: PM Anwar Ibrahim's administration plans to revive a contentious bill which carries harsh penalties – including whipping – in sharia courts. *South China Morning Post*. <https://www.scmp.com>
- Smith, K. (2018). The separation of religion and state in pluralistic societies. *Global Constitutionalism Review*, 14(1), 140–165.
- Sulaiman, M. (2020). The Federal Constitution as a secular document. *Malaysian Legal Perspectives*, 7(1), 23–41.
- Tan, S. H. (2020). Pluralism and national identity in contemporary Malaysia: A constitutional crisis? *Malaysian Journal of Political Science*, 41(1), 51-65.
- Tan, W. (2019). Constitutional limits on religious influence in governance. *Journal of Asian Public Policy*, 10(4), 120–143.
- Thio, L. (2006). Secularism, Islam, and the Constitution of Malaysia: The Role of Religion in Public Law. *Journal of Asian Legal Studies*, 10(4), 57-75.
- Thomas, M. (2021). Malaysia's Federal Constitution: Safeguarding pluralism. *International Law Journal*, 16(2), 95–110.
- Wong, S. (2017). Judicial checks on legislative powers in Malaysia. *Asian Legal Studies Review*, 8(3), 210–230.
- Yusof, A. (2021). Islamic governance and constitutionalism in Malaysia. *Journal of Modern Legal Studies*, 15(1), 70–88.
- Yusof, N. (2017). Religion and governance: The role of Islam in Malaysia's political and legal systems. *Malaysian Legal Studies*, 52(4), 387-402.
- Zain, R. A. (2019). The rise of religious laws and their implications on the Federal Constitution of Malaysia. *Asian Law Journal*, 50(1), 56-70.
- Zakaria, F. (2020). Challenges to judicial independence in Malaysia. *Constitutional Review Quarterly*, 11(4), 220–240.